

Office of the Presiding Officers  
Military Commission  
February 16, 2006

**SUBJECT: Presiding Officers Memorandum (POM) # 16 –Rules of Commission Trial Practice Concerning Decorum of Commission Personnel, Parties, and Witnesses.**

1. Commission Law tasks the Presiding Officer with maintaining the decorum and dignity of Commission proceedings. The attached Rules are promulgated to that end.
2. This POM and the enclosed Rules apply to participants in Military Commissions, as defined herein, and shall be in force whenever the Commission holds sessions. This POM supplements POM 5-1.

/s/

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Chief Presiding Officer

## **Rules of Commission Trial Practice Concerning Decorum of Commission Personnel, Parties, and Witnesses**

The below may be referred to as the Rules of Commission Trial Practice Concerning Decorum of Commission Personnel, Parties, and Witnesses. "Trial" as used in these Rules includes any session or proceeding of the Commission.

### **Rule 1: Generally**

The decorum and dignity to be observed by all at the proceedings of these Military Commissions will be the same as that observed in military and Federal courts of the United States.

### **Rule 2: Applicability**

These Rules apply to all Commission participants, which includes counsel, non-attorney assistants (to include investigative agents, paralegals, and non-qualified attorney assistants), Commission and Defense translators, court reporters, Foreign Area Consultants or Advisors, and witnesses. As indicated in these Rules, some provisions apply only to the accused. Failure to follow these Rules may result in denial of access to the courtroom or removal from the courtroom, and such failure could result in disciplinary or other action, to include exclusion from Commission proceedings and all commission-related activities.

### **Rule 3: Attire**

a. Military participants. All military participants will wear the appropriate military attire, as follows:

- Army: Class B
- Navy: Summer White
- Marine Corps: Summer Service C
- Air Force: Class B

If a participant desires to wear a different uniform, they must obtain prior approval from the Presiding Officer. If counsel desire to have a witness appear in a different uniform, the counsel will make that arrangement with the Presiding Officer.

b. Civilian participants.

(1) Men. While suit and tie or equivalent is encouraged, civilian counsel, other civilian representatives of a party, and civilian witnesses (except detainees) appearing

before the tribunal will wear, at a minimum, business casual attire. Examples of acceptable business casual attire for men include long-pants and button-up, collared shirts with sleeves, with or without sports jacket.

(2) Women. Acceptable attire for women includes, but is not limited to, either:

(a) Knee-length skirts or dresses and blouses worn with or without a jacket, or

(b) Long pants and blouses with sleeves worn with or without a jacket.

(3) Inappropriate civilian attire includes, but is not limited to, shorts, sleeveless shirts, attire that exposes the mid-drift (tank tops, halter tops, etc.), denim jeans, T-shirts, polo shirts, all hats on men, all ball caps, and mini skirts. Clothing must be clean, without tears, and un-frayed. No clothing or accessories with visible logos of any type (except small and discrete manufacturer's labels) will be worn. Individuals wearing inappropriate attire may be denied participation in courtroom proceedings.

(4) Civilian witnesses may also substitute attire that is the cultural equivalent of business casual attire, consistent with security requirements. In no case, however, may the attire cover the witness's face except as provided in Rule 3d.

c. The accused.

(1) Circumstances might limit the opportunities to obtain appropriate clothing for an accused, and cultural differences could bear on the type and style of clothing that an accused may want to wear during Commission proceedings. Accordingly, defense counsel are responsible for obtaining appropriate attire for an accused. This includes obtaining sufficient clothing in advance of trial to ensure an accused can appear in clean clothing during multi-day sessions.

(2) An accused will appear in business casual attire or, if an accused desires, culturally equivalent attire. In the event the defense counsel cannot with due diligence obtain sufficient appropriate clothing for an accused, the defense counsel will notify the prosecutor sufficiently in advance of trial to allow the prosecutor to obtain the necessary clothing. The prosecutor will then take the actions necessary to obtain clothing.

(3) An accused will not appear at a Commission session wearing prison attire. The accused will not appear at a Commission session in restraints unless coordinated in advance with the Presiding Officer. If security concerns dictate the use of restraints on an accused during a Commission session, the prosecution will first inform the Presiding Officer and the defense of that fact and the justification therefore. If restraints are required during a Commission session, the prosecution, and, in consultation and coordination with the defense, security personnel, and the Assistant, will ensure reasonable measures are taken so that the wearing of restraints is not obvious to the Commission members.

d. Special attire. If any party desires that a witness, due to security needs or in accordance with a protective order, testify in attire or in a manner that conceals their physical features, the parties will first advise opposing counsel and the Presiding Officer of the desired arrangements and the justification therefore.

e. Detainee witnesses. The proper attire and the Rules pertaining to restraints for detainee witnesses shall be the same as provided for an accused, except that the prosecution shall make arrangements for the attire of all detainee witnesses.

#### **Rule 4: Timeliness**

a. All participants shall be in the courtroom prepared to proceed at the docketed time. If a case is delayed because the previous case is still ongoing, then counsel shall remain in the same building until their case is called or shall be present at a time determined by the Presiding Officer. If counsel require a short delay in the start time, they shall request it from the Presiding Officer prior to the time proceedings are scheduled to start. When requesting a delay of the start time, counsel will provide an explanation of the need and inform opposing counsel before or contemporaneous with making the request to the Presiding Officer.

b. Except for detainee witnesses, counsel are responsible for the timely appearance of their witnesses in the courtroom. The prosecution is responsible for the timely appearance of any detainee witness.

#### **Rule 5: Conduct of Participants Generally**

a. No distractions are permitted during Commission sessions to include, but not limited to, eating, chewing gum, or using tobacco products.

b. Counsel may have water, coffee, tea, or similar beverages at counsel table. Carbonated beverages are not permitted. Counsel will drink from a plain paper, soft plastic, or Styrofoam cup without logos or labels. Cups containing other than water shall have lids. (Note that this Rule concerning beverages for participants differs from that provided for spectators in POM 5-1.)

c. It is improper for counsel or any other trial participant to visibly or audibly display approval or disapproval with testimony, rulings, counsel, witnesses, or the procedures of the Commission during the proceedings. This Rule does not prohibit counsel from making objections or litigating the correctness of the law and rulings, and addressing the credibility of witnesses.

d. Counsel may use computers, PDIs, or PDAs during the proceedings so long as they are silent and are not used to make an audio or video recording of any of the proceedings. Counsel will notify the Assistant to the Presiding Officers prior to any

Commission session before using such devices. Papers, documents, exhibits, file folders, file boxes, and other items necessary to presenting or conducting the case may be brought into the courtroom in any container so long as the container or item does not present a security risk as determined by the Assistant in consultation with JTF security personnel. Counsel will obtain advanced approval of all items to be brought into the courtroom. All items are subject to inspection. When inspecting items brought into the courtroom by counsel for the Prosecution or Defense to include their trial assistants, care will be taken to avoid reading or disclosing privileged information. (See also paragraph L of the enclosure to POM 5-1.)

e. Items that are necessary for conducting the trial but which might be used as a weapon (scissors, staplers, rulers or the like) will not be brought into the courtroom except as approved *in advance* by the Assistant in consultation with JTF security personnel.

f. Properly badged Commission personnel may use the designated OMC entrance and enter and leave during recesses. When operationally necessary, and when done in a manner that will not disturb the proceedings, properly badged Commission personnel may enter and leave through the designated OMC entrance while the Commission is in session.

g. Nothing in these Rules prohibits properly appointed JTF security forces from bringing those items or that equipment into the courtroom that are needed in the official performance of their duties as authorized by security plans approved by the Commanding Officer, JTF Guantanamo Bay.

#### **Rule 6: Civility, Decorum, and Manner of Address**

a. The focus of Commission proceedings should be on the facts and the law. Counsel are expected to treat opposing counsel, witnesses, and all personnel associated with the conduct of the proceedings with courtesy, respect, and civility. All communications, whether written or oral, should be couched in civil, non-sarcastic language, focusing on the factual or legal disputes.

b. Military participants, the Presiding Officer and other members, and witnesses will be addressed by their military rank and last or family name. Civilian participants, witnesses, and the accused will be addressed by their last or family name preceded by the appropriate title (for example, Doctor, Professor, Mr., Mrs., Miss, or Ms., etc.). First or given names will not be used.

c. The accused may be referred to as noted above or as “the accused.”

## **Rule 7: Conduct of Counsel**

Counsel will be guided in their conduct by the following.

a. Counsel shall direct all argument and responsive statements to the Presiding Officer or members, as applicable, while the Commission is in session and shall not engage in any colloquy or argument with or towards the other party. With permission of the Presiding Officer, counsel may confer quietly in the courtroom outside the hearing of the Presiding Officer, a witness, and the members.

b. Counsel will refrain from interrupting a party except as necessary to voice an objection.

c. Counsel will not interrupt the Presiding Officer.

d. Unless otherwise authorized by the Presiding Officer, counsel shall stand when addressed by or when addressing the Presiding Officer or members and when examining a witness. Unless otherwise permitted by the Presiding Officer, counsel will use the lectern and microphone at counsel table when addressing the Presiding Officer or members and when questioning a witness.

e. During sessions of the Commission, counsel will be seated at assigned counsel tables and no counsel will leave the courtroom without permission of the Presiding Officer.

f. When a counsel is addressing the Commission or examining a witness, all other counsel shall remain seated at counsel table, unless standing to make an objection.

g. Counsel shall not, during trial, state or allude to any matter that counsel has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

h. Except when testifying as a witness, counsel shall not, during trial, assert any personal knowledge of the facts in issue.

i. Counsel shall not, during trial, assert any personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of an accused; but counsel may argue, based on analysis of the evidence, for any position or conclusion with respect to the matter stated therein.

j. Counsel shall not intentionally or habitually violate any established rule of Commission procedure, Presiding Officer Memoranda, Commission Law, or these Rules.

k. In presenting a matter to the Presiding Officer, counsel shall disclose legal authority in the controlling jurisdiction or Commission Law known to counsel to be directly contrary to his or her position and which is not disclosed by opposing counsel.

l. Counsel shall not knowingly disobey these Rules, a ruling, a standing order or order of the Presiding Officer, but may take appropriate good faith action to contest the validity of such Rule, ruling, or order using the procedures in the appropriate POM.

m. Counsel will conduct examination or cross examination, make oral argument, or otherwise address the commission from the lectern and microphone located at counsel table and only one counsel from each side will be allowed to address an issue. Without leave from the Presiding Officer, only the counsel that conducted the examination or cross examination of a witness may make objections - or respond to objections - during the taking of that witness' testimony.

n. Witnesses shall be treated with respect by counsel. Witnesses may not be physically intimidated or otherwise badgered.

o. Unless otherwise permitted by the Presiding Officer, counsel shall question witnesses from the lectern at counsel table. Before approaching any witness, counsel shall obtain the permission of the Presiding Officer. Counsel shall not position themselves so as to block the view of the witness from the Presiding Officer, members, opposing counsel, or the accused. Counsel, upon completing examination of the witness, whether on direct or cross, shall so state, and the Presiding Officer will then direct such further examination of the witness as may be appropriate.

p. Requests for re-reading of questions or answers shall be addressed to the Presiding Officer.

q. If counsel believe an opposing party has acted in an inappropriate or unethical manner, they will make an appropriate motion following the guidelines set forth in POM 4-3. In the event such a motion is made, it will be litigated at the earliest opportunity. It is suggested that, prior to making such a motion, counsel confer with the Chief Prosecutor or Chief Defense Counsel as appropriate.

#### **Rule 8: Conduct of Witnesses and Responsibilities of Counsel Calling a Witness**

a. The proponent of a witness is responsible for ensuring that the witness is advised of and complies with these rules. Specifically, counsel will advise their witnesses:

(1) Of these Rules with respect to attire and that the witness may not chew gum or tobacco, wear dark glasses, or use profanity, except as may be required in the presentation of the case;

(2) That they will not engage Commission members or the Presiding Officer in casual conversation;

(3) Of the physical arrangements of the courtroom, where they should go, and how they should conduct themselves;

(4) To be immediately available when called to testify. Counsel should coordinate with each other and the Presiding Officer to reduce, whenever practical, the amount of time a witness is required to wait prior to testifying;

(5) Not to salute the Presiding Officer or the members of the Commission, and

(6) Of information and, to the extent practical, assistance concerning the availability of services such as transportation, parking, lodging, and availability of Commission or defense translators or interpreters.

### **Rule 9: Objections**

The following Rules govern the making of objections during the proceedings, whether before the Presiding Officer alone or with all members present.

a. When making or raising an objection, counsel shall stand and state only the nature and basis of the objection, without further elaboration, unless requested by the Presiding Officer. If Counsel believe it necessary for a full and fair trial, they may request, or the Presiding Officer may direct, a session outside the presence of the other members to argue the merits of an objection.

b. Counsel shall not present argument on an objection without the permission of the Presiding Officer.

c. Argument on objections shall be direct and succinct. Citation to specific authority will only be necessary when required by the Presiding Officer.

d. An objection or argument for the purpose of making a speech, repeating testimony, or attempting to guide a witness, is prohibited.

e. After the Presiding Officer rules on an objection, counsel may not comment or make further argument without the express permission of the Presiding Officer.

### **Rule 10: Accounting for the parties**

Each time the Commission convenes or reconvenes, the Presiding Officer or, if he or she does not do so, the prosecutor shall announce on the record the presence or absence of the parties (e.g., "All parties to the trial who were present when the Commission



closed/recessed are again present ((except the members) (except \_\_\_\_\_))” If any party is to be absent, the Presiding Officer and opposing counsel shall be advised in advance. The prosecutor shall focus particular attention on any change in the court-reporter present.

### **Rule 11: Administering oaths to witnesses**

The prosecutor shall administer an oath to tell the truth to each witness called to testify and, unless prohibited by a protective order, shall ensure that the military witness’ name, rank, and military organization, or the civilian witness’ name and city and state, or country of residence are announced in open session and made part of the record of trial proceedings.